



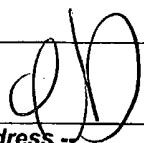
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,246	12/20/2001	Jeffrey E. Fish	KCX-400 (15421)	9059
22827	7590	08/25/2004	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/027,246	Applicant(s) FISH ET AL.	
	Examiner Jenna-Leigh Befumo	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on June 23, 2004, has been entered. Claims 1, 15, and 25 have been amended. Therefore, the pending claims are 1 – 30.

2. The 35 USC 103 rejection to claims 25 – 30 based on Baer et al. (5,938,650) is withdrawn since Baer et al. doesn't teach using suction to facilitate positioning of the particles.

Terminal Disclaimer

3. The terminal disclaimer filed on June 23, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Application 10/027,787 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1 – 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. (4,892,535) in view of Tanzer et al. (5,411,497).

6. Claims 1 – 24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. for the reasons of record.

7. Claims 25 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. in view of Bjornberg et al.

The features of Baer et al. and Bjornberg et al. have been set forth above. Baer et al. fails to teach using a vacuum or suctional force to apply the particles to the substrate.

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Bjornberg et al. discloses that the pockets can be formed by with vacuum to create pockets which would assist with the application of the particles. As shown in Figure 5, the vacuum forming the nonwoven material produces uniform pockets which hold the particles in the pockets resulting in a more uniform pocket size and particle amount per pocket. Thus, it would have been obvious to one of ordinary skill in the art to vacuum form pockets in the laminate produced by Baer et al. because vacuum forming is a known method to create pockets that hold particles. Also using vacuum form pockets would give the manufacturer more control over the placement of the pockets and the particles in the pockets. In other words, the particles won't be spilling out of the pocket before the two layers are bonded together and the pockets will have a more uniform size. Therefore, claims 25 – 30 are rejected.

Response to Arguments

8. Applicant's arguments filed June 23, 2004 have been fully considered but they are not persuasive. The applicant argues that Bjornberg et al. fails to teach using textured substrates with elevations and depressions (response, pages 9 – 10). First, it is noted that this is a limitation directed to the shape of the material before it is laminated. However, patentable weight is only given to the shape of the product in the final form. Hence, the prior art does not need to start out with textured outer layers as long as the final product has the claimed elevations and depressions in the outer layers. As set forth in the previous Office Action, the bottom layer taught by Bjornberg et al. will not stay completely flat, but will bulge out to some degree due to the presence of the particles, inherently forming elevations and depressions in the final product. Thus, both the top and the bottom layers will have depressions and elevations in the final product. The

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backing layer does not need to have a textured form before the laminate is produced as long as it is present in the final product. Therefore, the rejection is maintained.

Additionally, the applicant argues that there is no reason to combine Bjornberg et al. and Tanzer et al. because the disposable absorbent materials in the references have different laminate structure (response, page 10 -- 11). However, it is felt that the two references are related since they are both drawn to absorbent composites comprising an absorbent laminate sheets with discrete portions of superabsorbent material. Thus, even though Tanzer et al. discloses using the absorbent layer in a larger laminate material, the smaller absorbent composite part of the laminate material is similar in structure to the absorbent taught by Bjornberg et al. That is, the absorbent layer in the composite taught by Tanzer et al. is its own separate laminate added to the diaper product and comprising two outer layers which are combined together to form a laminate with discrete regions of particles. Further, Tanzer et al. is relied on to teach how to avoid situations that prevent the absorbent material from absorbing fluids because the particles have limited space and cannot expand to their full size. Therefore, combining the teach from Tanzer et al. that by creating pockets which can break open apart as the absorbent material expands, allows the absorbent material to expand as much as possible when used. While this teaching would require one of skill to modify the structure of the bond between the two layers in Bjornberg et al. so that the pockets can break open. This teaching would not require one of skill to make any changes the overall structure of the laminate nor would one be hindered by the fact that Bjornberg et al. has less layers. Also, this teaching would not be not limited to situations with a bulky diaper structure, but would also be relevant to other absorbent structures which use superabsorbent materials and store the superabsorbent

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material in discreet pocket regions, such as Bjornberg et al. Therefore, the rejection is maintained.

9. The applicant also argues that it would not be obvious to change the size of the pockets in the product taught by Baer et al. since the prior art did not recognize that the length to width ratio of the pockets can facilitate delamination (response, pages 11 – 12). First, it is noted that while the prior art might not explicitly recite various length to width ratios that can be used in the laminate, but Baer et al. discloses that the pockets can be different shapes and sizes and includes a couple of figures where the pockets are formed into different sizes. Hence, even if the prior art did not recognize that changing the shape or size of the pockets would effect the delamination properties of the laminate, the prior art did recognize the fact that the shape and size of the pockets could be changed and is not limited to only one shape. Further, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art, i.e., changing the shape of the pockets relates to the delamination strength of the laminate, cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further, as noted previously, as long as the prior art teaches the claimed structural features, then the property, in this case the delamination property, would be inherent to the prior art and does not need to be explicitly acknowledged by the prior art. Further, it has been held that failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art reference does not preclude a finding of anticipation. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999). And finally, it is noted that while the applicant argues that the

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delamination strength is related to the size of the pockets, this feature is not claimed, and therefore, cannot distinguish the present claims from the prior art. Thus, the rejections are maintained.

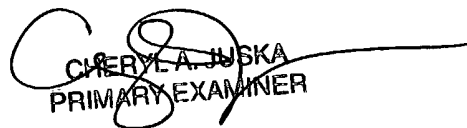
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
August 17, 2004



CHERYL A. JUSKA
PRIMARY EXAMINER